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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

MICROSOFT CORPORATION, et al.

Defendant.

Case No. 23-cv-02880-JSC

**NON-PARTY NINTENDO OF AMERICA
INC. UNOPPOSED MOTION FOR
ORDER CHANGING TIME**

1 **I. INTRODUCTION**

2 Pursuant to N.D. Cal. Civil Local Rule 6-3 (“Civil L.R.”), Non-Party Nintendo of
3 America Inc. (“NOA”) respectfully requests an extension of time to file its statement and/or
4 declaration in accordance with Civil L.R. 79-5(f). Plaintiff Federal Trade Commission (“FTC”)
5 and Defendants Microsoft Corp. and Activision Blizzard Inc. (collectively, “Defendants”) have
6 indicated that they do not oppose this request.

7 **II. BACKGROUND**

8 Pursuant to this Court’s previous order, by June 20, 2023 at noon, the parties were
9 instructed to file a Joint Statement listing out each exhibit the parties intended to offer at the
10 upcoming preliminary injunction evidentiary hearing set to begin June 22, 2023, and where on
11 the docket the Court could locate the related Civil L.R. 79-5 statement and/or declaration. (Dkt.
12 No. 76). Plaintiff sent a letter on June 18, 2023, via email at 9:52 pm ET, informing non-party
13 NOA that it anticipated using certain NOA documents and testimony as exhibits at the upcoming
14 hearing. Defendants sent a similar email on June 19, 2023, via email at 10:15 pm ET, informing
15 NOA of their intent to use additional NOA documents for the same purpose. Those exhibits will
16 include documents that NOA has previously produced to the FTC as part of its investigation and
17 subsequent Part 3 litigation administrative proceeding regarding Defendant Microsoft Corp.’s
18 proposed acquisition of Defendant Activision Blizzard, Inc. NOA has previously designated all
19 the exhibits in question as confidential pursuant to FTC Rules governing investigations and a
20 Protective Order entered by the FTC Administrative Law Judge in the Part 3 proceedings. (FTC
21 Dkt. No. 9412, Doc. No. 606385, Dec. 9, 2022).

22 **III. ARGUMENT**

23 When a party wishes to file a document that has been designated as confidential by
24 another party or non-party, the filing party must file an Administrative Motion to Consider
25 Whether Another Party’s Material Should Be Sealed. Civil L.R. 79-5(f). The designating party
26 typically has seven (7) days to file a statement and/or declaration stating its position in response.
27 That time frame has been compressed given the briefing and hearing schedule for the FTC’s
28 motion for a preliminary injunction.

1 NOA's counsel received Plaintiff's letter related to this matter late Sunday evening
2 before the federal holiday on Monday, and Defendants' email late Monday evening. Since then,
3 NOA has worked expeditiously to review the documents at issue and prepare briefing for this
4 Court. However, due to numerous factors, in order to comply with the accelerated schedule for
5 these proceedings, non-party NOA requires additional time to review the FTC's proposed
6 exhibits and determine what documents, in whole or in part, NOA will request to remain under
7 seal.

8 *First*, the day following NOA's receipt of Plaintiff's letter and the day of receipt of
9 Defendants' email, June 19, 2023, was Juneteenth, a federal holiday. *Second*, key NOA in-house
10 counsel are currently traveling internationally, creating a significant time difference between
11 NOA's counsel in the United States.

12 Finally, in order to keep NOA's request for sealing as narrow as possible, NOA will need
13 to review and identify specific portions of those documents which NOA will seek sealing for.
14 Two of those documents are lengthy deposition transcripts that Plaintiff intends to use at the
15 hearing. Defendants have indicated that they will disclose their hearing designations of those
16 transcripts to NOA today, and seek Plaintiff's counter-designations by Wednesday. Plaintiff has
17 indicated its intent to introduce the entirety of the transcripts as exhibits – not excerpted portions
18 of the testimony – necessitating a line-by-line review. Therefore, (i) for the designated and
19 counter-designated portions of the transcripts, NOA requests a slightly longer extension, to
20 Monday, June 26, 2023, 5 pm PT, and (ii) for the entirety of the deposition transcripts, NOA
21 requests an extension to Tuesday, June 27, 2023, 5 pm PT.

22 When NOA files its Civil L.R. 79-5 statement and/or declaration, NOA will include for
23 the Court an exhibit list with annotations describing the exhibits at issue.

24 Lastly, on June 19 and 20, 2023, counsel for NOA conferred with counsel for Plaintiff
25 Defendants, all of whom indicated that they do not oppose the relief sought in this motion.

26 **IV. CONCLUSION**

27 For the foregoing reasons, non-party NOA respectfully requests the Court (i) enter a one-
28 day deadline extension for NOA to file its Civil L.R. 79-5(f) statement and/or declaration for

documents that are not deposition transcripts, to June 21, 2023, 5:00 PM PT (PX3066, PX3161, PX3219, PX3221, PX3270, and PX8002 as identified in Plaintiff's letter to NOA; and RX2001, RX2002, RX2040, RX2058, RX2065, RX2089, RX2096, RX2104, RX2106, RX2108, RX2109, RX2111, RX2116, RX2124, RX2125, RX2126 and RX2127 as identified in Defendants' email to NOA); (ii) enter a six-day deadline extension for NOA to file its Civil L.R. 79-5(f) statement and/or declaration for the portion(s) of any deposition transcripts designated and/or cross-designated by the parties, to June 26, 2023, 5:00 pm PT; and (iii) enter a seven-day deadline extension for NOA to file its Civil L.R. 79-5(f) statement and/or declaration for the entirety of the deposition transcripts identified on Plaintiff's exhibits list, to June 27, 2023, 5:00 pm PT (PX7059 and PX7065 as identified in Plaintiff's letter to NOA).

Dated: June 20, 2023

VENABLE LLP

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